



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/435,377 05/05/95 CLERON

M P1525/112007

GESART AND MCKENNA
30 ROWES WHARF
BOSTON MA 02110

LM51/0730

EXAMINER

CALDWELL, P

ART UNIT

PAPER NUMBER

2755
DATE MAILED:

#24
07/30/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory ActionApplication No.
08/435,377Applicant(s)
Cleron et alExaminer
Pat CaldwellGroup Art Unit
2755**THE PERIOD FOR RESPONSE:** [check only a) or b)]

- a) ☐ expires _____ months from the mailing date of the final rejection.
- b) ☒ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Jun 23, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s): REQUEST for reconsideration
- ☒ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☐ will not be entered because:
- ☐ they raise new issues that would require further consideration and/or search. (See note below).
 - ☐ they raise the issue of new matter. (See note below).
 - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

- ☐ Applicant's response has overcome the following rejection(s): _____
- _____

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See attachment

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: _____

Claims objected to: _____

Claims rejected: 1-20

- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

- ☒ Other See attachment.


ALVIN E. OBERLEY
SUPERVISORY PATENT EXAMINER
GROUP 2700

Art Unit: 2755

ATTACHMENT TO ADVISORY ACTION

1. This attachment is to provide clarification regarding the sections of the MPEP which the Examiner has relied upon and cited within final action and interview summary (paper items 21 & 22) and the issues regarding the submitted declaration.
2. In response to telephone conversations on 5/11/99 and 6/29/99 and the request for the sections of the MPEP which the Examiner was relying upon, Examiner has relied upon **MPEP 715.04-715.07 (Swearing Back of Reference-Affidavit or Declaration under 37 CFR 1.131)**. For Applicants' convenience, a copy of the sections 715.04-715.07 of the MPEP has been submitted with this attachment.
3. In response to telephone conversation on 6/29/99, Examiner has also relied upon **MPEP 201.03 (section dealing with consent of assignee)**.
4. In response to Applicants' argument that the First Final Action provided no further explanation as to why the Declaration was deemed insufficient, the final rejection (**paper item 21, dated 4/27/99**) stated two issues regarding the submitted 131 declaration.

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Issue 1 concerned the formal requirements of the declaration (**paper item 21, pages, 11-12**).

Refer to **MPEP 715.04**.

Issue 2 concerned submission of evidence and facts as to establish reduction to practice (**paper item 21, page 13**). Refer to **MPEP 715.07**.

5. In response to Applicants' argument that it is improper for the Patent Office to challenge the assertions made in a declaration, MPEP 715.07 states that when reviewing a 37 CFR 1.131 affidavit or declaration, the Examiner must consider all of evidence presented in its entirety, including the affidavits or declarations and all accompanying exhibits, records and "notes". MPEP 715 further allows the Examiner to respond to a 37 CFR 1.131 affidavit or declaration by providing to the applicants statements which include the basis for the acceptance or refusal of the submitted affidavit or declaration. Refer to MPEP 715.

6. In response to Applicants' argument that it was Examiner's position that only a Declaration from the President of Apple would be acceptable, the Examiner disagrees with this interpretation of the interview. Examiner cited as examples those individuals which are listed

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within MPEP 201.03 (section dealing with consent of assignee) when discussing the issue of assignee.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pat Caldwell whose telephone number is (703) 305-3805.



ALVIN E. OBERLEY
SUPERVISORY PATENT EXAMINER
GROUP 2700